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Should We Tolerate Benevolent Absolutisms?

Abstract: Since the publication of *The Law of Peoples* Rawls's critics have been concerned with the excessively permissive nature of its account of international toleration. In this paper I go against the thrust of this critique and show that if we adopt the best reconstruction of the Rawlsian view of toleration the real issue is not to explain why we should tolerate decent peoples, but why we should not tolerate benevolent absolutisms. The real weakness displayed by *The Law of Peoples* is that it does not convincingly explain why the scope of toleration isn't broader, not narrower.

Keywords: Rawls, toleration, political participation, democratic peace.

How far, if at all, should liberal societies tolerate nonliberal ones? A prominent answer to this question was put forward by John Rawls in *The Law of Peoples (LP)*.¹ There, Rawls claims that some nonliberal political societies ("decent peoples") should be considered as members in good standing of what he calls the Society of Peoples. Decent peoples respect basic human rights, are not externally aggressive, and allow their citizens to actively participate in internal political life.² Furthermore, decent peoples endorse the same conception of international justice that Rawls imagines to be the result of a liberal understanding of a just foreign policy.³

According to its critics, Rawls' account of international toleration is excessively inclusive: tolerating decent peoples is tolerating too much.⁴ In this paper I go against the thrust of this critique and argue that the real

¹ John Rawls, *The Law of Peoples, With "The Idea of Public Reason Revisited"* (Cambridge, MA: Harvard University Press, 1999).

² Ibid., pp. 64ff.

³ Ibid., pp. 68–70.

⁴ Rawls' critics have claimed: that there is no relevant analogy between the toleration of reasonable comprehensive doctrines at the domestic level and tolerating decent peoples internationally (Kok-Chor Tan, "International Toleration: Rawlsian vs. Cosmopolitan," *Leiden Journal of International Law* 18:4 (2005), pp. 685–710; Tan, *Toleration, Diversity, and Global Justice* (University Park, PA: Penn State Press, 2000); Tan, "Liberal Toleration in Rawls's Law of Peoples," *Ethics* 108:2 (1998), pp. 276–95); that the first international original position of LP is artificially rigged in favour of nonliberal societies (Thomas Pogge, "Do Rawls' Two Theories of Justice Fit Together?," in Rex Martin and David A. Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell Publishing, 2006), pp. 206–25; Pogge, "The Incoherence Between Rawls's Theories of Justice," *Fordham Law Review* 72:5 (2004), pp. 1739–59; Pogge, "Rawls on International Justice," *Philosophical Quarterly* 51:203 (2001), pp. 246–53; Charles R. Beitz, "Rawls's Law of Peoples," *Ethics* 110:4 (2000), pp.

issue with Rawls' view is that, properly understood, it seems not too inclusive but not inclusive enough. More specifically I will take a closer look at the standing of what Rawls calls "benevolent absolutisms." Benevolent absolutisms respect the human rights of their members but do not allow their citizens to participate in political life.⁵ According to Rawls, their lack of internal mechanisms of collective will-formation means that benevolent absolutisms cannot be considered well-ordered and should not be seen as members in good standing of the Society of Peoples. My main contention is that if we accept what I take to be the best reconstruction of Rawls' argument for tolerating decent peoples, then, *LP* does not seem to provide conclusive reasons not to tolerate benevolent absolutisms.

In order to demonstrate this I undertake a conceptual analysis of Rawls' account of international toleration. I start from the widely acknowledged idea, shared by his critics and defenders alike, that two elements are central to Rawls' view: what I will call the criteria of decency that define the features of a decent people, and the overlapping consensus on the eight principles of *LP* between liberal and decent peoples. I claim that the best way of relating these two elements and the scope of international toleration takes the following form: *the criteria of decency set minimal necessary conditions that a people must meet if said people has to be able to endorse (for the right reasons) the eight principles of LP and thus be tolerated.* According to this reconstruction of the Rawlsian toleration argument, the scope of international toleration is co-extensive with the scope of those peoples that are able to endorse, for the right reasons, the eight principles of *LP*. Understood in this way, however, the structure of Rawlsian toleration suffers an important shortcoming: it seems unable to specify why all three criteria of decency are necessary to endorse the eight principles of *LP*. While two of the criteria, respect for human rights and external peacefulness, are explicitly or implicitly part of the very content

669–96)); and that the very idea of decent people is internally inconsistent with Rawls' approach to reasonable pluralism as it allows the oppressive use of state power (Neufeld, "Civic Respect, Political Liberalism, and Non-Liberal Societies," *Politics, Philosophy & Economics* 4:3 (2005), pp. 275–99; Simon Caney, "Cosmopolitanism and the Law of Peoples," *Journal of Political Philosophy* 10:1 (2002), pp. 95–123). Needless to say, these criticisms have not gone unanswered. Rawls' defenders have suggested that there are good prudential reasons to tolerate decent societies (Pettit, 2013); that the latter are corporate moral agents that deserve respect (David A. Reidy, "Rawls on International Justice: A Defense," *Political Theory* 32:3 (2004), pp. 291–319); that decent institutions are a system of public right that imposes genuine duties on their members and thus it would be illegitimate to interfere with them (Reidy, "Human Rights and Liberal Toleration," *Canadian Journal of Law and Jurisprudence* 23:2 (2010), pp. 287–317; Reidy, "Cosmopolitanism: Liberal and Otherwise," in Gillian Brock (ed.), *Cosmopolitanism Versus Non-Cosmopolitanism: Critiques Defenses, Reconceptualizations* (Oxford: Oxford University Press, 2013); Jon Mandle, *Global Justice* (Cambridge: Polity Press, 2006)); and that, properly understood, the idea of including even non-internally-liberal societies in the scope of international public justification does not require fundamental changes with Rawls' political liberalism (Thomas Porter, "Rawls, Reasonableness, and International Toleration," *Politics, Philosophy and Economics* 12:1 (2012), pp. 382–414; Tarek Hayfa, "The Idea of Public Justification in Rawls's *Law of Peoples*," *Res Publica* 10 (2004), pp. 233–46; Leif Wenar, "The Unity of Rawls's Work," *Journal of Moral Philosophy* 1:3 (2004), pp. 265–75; Mitchell Avila, "Defending a Law of Peoples: Political Liberalism and Decent Peoples," *Journal of Ethics* 11:1 (2007), pp. 87–124). Neither Rawls' critics nor his more sympathetic interpreters seem to be aware of the possibility that the real issue for Rawlsian toleration may lie elsewhere (but see Robert S. Taylor, *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness* (University Park, PA: Penn State Press, 2011), for a partial exception).

⁵ Rawls, *The Law of Peoples*, p. 4.

of the eight principles of *LP*, the third, internal political participation, is not. In other words, while it seems to be correct to state that a people that fails to respect human rights and/or is externally not peaceful cannot endorse the eight principles of *LP*, it is less clear why a people that does not allow for internal political participation would not be able to.

Benevolent absolutisms can be precisely portrayed thus. They are plausibly presented as externally peaceful (or, at the very least, we have no principled reason to believe that they are not) and, by definition, they respect human rights. If this reconstruction of the Rawlsian argument is correct, then *LP* does not seem to offer conclusive reasons why we should not tolerate benevolent absolutisms. I consider **three** main objections to the latter claim. The first argues that benevolent absolutisms cannot participate in the overlapping consensus on the principles of *LP* because these principles are addressed to a specific type of political society, namely, a ‘people’. The second and third contend that benevolent absolutisms are not externally peaceful because they are not part of democratic peace **and/or because they cannot be said to respect basic human rights ‘as rights’**. I reject both arguments as inconclusive. **I want to end this introduction with a comment and a disclaimer. The comment is that the argument offered in this paper, if successful, has broader implications about international toleration, not simply Rawls’ argument. While the paper discusses the position of benevolent absolutisms within the Rawlsian framework, it also discusses the general structure of the arguments that are given to support an account of international toleration more broadly. In doing so, it suggests something important, namely that tolerating a political society should be based, to a large extent, on its ability to follow norms of international conduct that we deem to be acceptable from a liberal perspective. This does not imply, as we will see below, that such norms will tell us nothing about the internal organization of a people, but it does suggest a different way of assessing such internal political make-up: in terms of its ability to sustain congruence with a liberal foreign policy. Now for the disclaimer – the argument presented here may suggest a conclusion that I would like to resist. The conclusion is that we should tolerate benevolent absolutisms. This is not what the paper wants to establish. Whatever the merits of the argument the conclusions we can draw from it are much more limited. What the argument suggests is that the Rawlsian framework for understanding the exclusion of benevolent absolutisms is problematic, not that we should positively conclude that we should tolerate them as equal members in good standing of the Society of Peoples.**

1 Toleration in *LP*: A Brief Overview

According to Rawls, representatives of peoples, initially framed as liberal societies, would (behind an appropriately framed veil of ignorance) select eight principles to govern their foreign policies.⁶ These principles largely reflect what we can describe as the main normative ideals latent in the public political culture of international society.⁷ They take for granted the end of colonial rule as a legitimate form of political relationship between political communities. They ascribe value to collective self-determination but recognize the limited nature of state power over its citizenry and the link between the legitimacy of state rule and respect for basic human rights. They incorporate a basic presumption against outside interference in the political life of peoples, bar cases of aggressive war and internal repression. More controversially (at least from the perspective of international law) they acknowledge the obligations of well-ordered peoples to aid societies who are not well-ordered because of their unfavourable social, economic and political circumstances. This is the first part of *LP*'s ideal theory.

The second part extends this approach to nonliberal societies and aims to provide an account of international toleration. For Rawls, toleration does not simply entail refraining from coercion;⁸ it means to respect those who are tolerated, and in the specific case of *LP*, to respect decent peoples as members in good standing (*bona fide*) of the Society of Peoples. There are many possible ways of organizing decent political institutions,⁹ yet all decent political societies share certain features. Decent peoples: (a) respect basic human rights; (b) their foreign policy is not aggressive nor expansionist in character; and (c) they consult their members, through appropriate forms of political representation, when important decisions have to be taken.¹⁰ These three criteria (call them “the criteria of decency”), when considered together, mean that the behaviour and features of a decent people meet the standards required to “override the political reasons we might have for imposing sanctions.”¹¹ Furthermore, according to Rawls, representatives of decent peoples would choose to abide by exactly the same eight principles of international justice endorsed by liberal peoples and to do so for the right reasons, not simply as a matter of political prudence. Decent peoples are thus part of an international overlapping consensus on the very same principles of justice that liberal peoples would select as the guide to their own foreign policy and to structure their mutual undertakings.

⁶ *ibid.*, p. 37.

⁷ Leif Wenar, “The Unity of Rawls’s Work,” *Journal of Moral Philosophy* 1:3 (2004).

⁸ Rawls, *The Law of Peoples*, p. 59.

⁹ *Ibid.*, p. 64.

¹⁰ *Ibid.*, pp. 64–5.

¹¹ *Ibid.*, p. 83. Note how this statement is ambiguous in light of this paper’s discussion. To meet the standards allowing us “to override reasons for imposing sanctions” does not seem the same thing as to have reasons “to respect” a political society.

2 Overlapping Consensus and the Criteria of Decency: How Related?

The admittedly brief summary of Rawls account of international toleration presented above emphasizes how both the criteria of decency and allegiance to the eight principles of LP are relevant in determining which nonliberal peoples are to be tolerated. Yet it does not clarify how these two elements interact (conceptually speaking), and which of the two (if any) should take priority when we assess the case for tolerating a nonliberal political society. How are the criteria of decency and the allegiance to the eight principles of *LP* to be related in the structure of Rawls' toleration argument?

At least three options seem to be available. Firstly, we can picture the criteria of decency, by themselves, to provide *sufficient conditions* for tolerating a society that meets them (call this the 'decency is sufficient' option, or DIS). Any political society that meets these criteria should be tolerated, while allegiance to the eight principles of *LP* would only provide some form of independent confirmation that a society that meets these criteria can adopt a foreign policy consistent with the foreign policy of liberal peoples. Secondly, we can picture the criteria of decency, again, by themselves, as providing a set of *necessary conditions* for toleration. In this picture, the criteria of decency could be coupled with the endorsement of the eight principles of LP, and then be pictured as *jointly sufficient* for tolerating a political society (call this the 'decency is necessary' option, or DIN). This would entail, for example, that a political society that meets the criteria of decency *and* endorses the principles of *LP* is to be tolerated, but that a society that does not meet those criteria, and yet still endorses the principles of *LP*, should not be tolerated. Thirdly, we can imagine the criteria of decency as *minimal necessary conditions* that a society must satisfy in order to be able to endorse the eight principles of *LP* and thus be tolerated (call this the 'overlapping consensus' option, or OC). This would entail that a society that fails to meet those criteria cannot be described as being able to endorse the eight principles of *LP*. Here, note that in OC the judgment concerning whether we should tolerate a political society ultimately rests on its ability to endorse the eight principles of *LP* rather than whether it meets the criteria of decency. The latter, in OC, only provide evidence of what the possible relationship between a people that meets those criteria and the eight principles of *LP* is – not a benchmark for toleration. In other words, in OC the scope of toleration is co-extensive with the scope of those who are able to endorse the eight principles of *LP*, while the criteria of decency only serve the purpose of further specifying the features of this particular "set" of peoples (more on this below).

The Structure of the Toleration Argument in LP: Three Options

	Criteria of decency	Support for the eight principles of LP	Structure of the toleration argument
DIS	Sufficient conditions	Secondary compatibility check with liberal foreign policy	Fully based on the criteria of decency
DIN	Necessary conditions	Jointly sufficient when coupled with the criteria of decency	Partly based on the criteria of decency
OC	Determine relationship with principles of LP	Provides necessary and sufficient conditions	Based on the overlapping consensus

What is the best way of understanding the structure of the Rawlsian account of toleration? **DIS** strikes me as the least convincing option.¹² To see the criteria of decency as providing, by themselves, sufficient conditions for tolerating a political society, independent from allegiance to the eight principles of *LP*, would leave unspecified the criteria's origin and justificatory force. The criteria of decency are not the result of the application of the Rawlsian contractualist methodology to a special class of non-liberal societies. Rawls is clear that in the case of a decent people "there is no original position argument deriving the form of its basic structure."¹³ Justice as fairness only **uses** the original position three times, twice for liberal societies and once for non-liberal but decent ones.¹⁴ It does not attempt to derive the criteria of decency or any principle of internal political organization for decent nonliberal societies from the standpoint of an appropriately framed nonliberal original position. It is thus unclear what the justificatory force of these criteria would be if we interpreted them as simply self-standing normative criteria for the political organization of a people. From a liberal perspective, the features of a people specified by the criteria of decency are clearly insufficient as standards of political justice and would not represent an acceptable interpretation of the rights and prerogatives of liberal citizenship. The criteria of decency per se do not seem to justify toleration. This is especially the case in the Rawlsian picture where toleration is based on mutual respect and entails equal standing in international society, not simply the choice of refraining from the use of coercion.

DIN and OC are probably both more plausible and closer to Rawls' text – at least if it is read charitably. Recall that DIN states that the criteria of decency are necessary conditions for toleration and jointly

¹² See also Porter, "Rawls, Reasonableness, and International Toleration."

¹³ Rawls, *The Law of Peoples*, p. 70.

¹⁴ Ibid.

sufficient with allegiance to principles of *LP* to determine whether a society should, in the end, be tolerated or not. One may initially find DIN unconvincing because it may suggest, paradoxically, that a liberal society could fail the toleration test. If the criteria of decency are necessary conditions for toleration, can it be the case that a liberal (and thus not decent) people fails to meet those criteria? No, because the criteria of decency refer to a subset of the rights and liberties afforded to liberal democratic citizens; if the criteria of decency represent necessary conditions, then, a fortiori, any set of characteristics containing them (such as liberal democratic rights) can plausibly be said to meet those conditions too.¹⁵ Nonetheless, DIN still suffers from the same basic problem of DIS. Beyond the mere intuitive fact that respecting human rights, being peaceful and allowing for political participation – the criteria of decency – are no doubt “good things” worthy of some form of moral consideration, it simply provides no clear argument as to why it is exactly those features that should act as a form of **threshold** for deciding which polities are to be tolerated (and thus deserve equal standing in international society), and which are not. Put differently, if we accept DIN we are still unable to specify what we can call the justificatory origins of these criteria.

The choice of the criteria of decency as a threshold for toleration suggests a form of ad hoc stipulation that we may use to guide our practical behaviour in view of the establishment of some form of *modus vivendi*, rather than a clear argument to extend equal respect and equal standing to those who are tolerated. For example, why should we not tolerate a political society that respects human rights and is externally peaceful but does not allow for internal political participation, and which nonetheless pledges allegiance to the same principles that liberal peoples give to themselves?¹⁶ What would be our intuition in this case? If we sense that democratic participation is morally relevant (something which I will largely assume), then we have to recognize that decent societies are not democratic, and that to set the bar at the level of a decent consultation hierarchy does not explain why it is exactly *that* level of departure from democracy that we are prepared to respect and not something else. Put differently, just as for DIS, DIN seems unable to explain the justificatory origins of the criteria of decency and this impinges on their ability to provide a convincing answer to the question of toleration.

Some may suggest that I am not threading carefully enough here: am I implying that political participation should play no role in an account of international toleration?¹⁷ While many believe that democracy is crucial for tolerating a political society, and some, like Rawls, seem to suggest that a measure of (non-

¹⁵ Ibid., p. 63.

¹⁶ This is precisely the case of benevolent absolutisms discussed in the following sections of the paper.

¹⁷ I wish to thank an anonymous referee for pushing me to consider this objection.

democratic) political participation is necessary to tolerate a people, my argument seems to imply something more radical, namely, that no form of political participation is required for toleration. I disagree. The point is rather that while we have some intuitive understanding of why, *hypothetically*, democratic political participation, something that is at the core of modern liberalism, *may* play a role in deciding which people should be tolerated, it is unclear how we can form a weaker and yet non-arbitrary standard of representativeness that can play the same role. Rawls simply provides no clear argument to support the idea that a non-democratic account of political participation can act as a necessary condition for tolerating a political society. And I think that one has good reason to suspect that such an argument is not forthcoming, especially if we define political participation as weakly as Rawls does for decent peoples. For example, Rawls speaks of decent hierarchical peoples' having a decent consultation hierarchy. While such hierarchy is representative insofar as all citizens are part of it, both the way in which they are included in the hierarchy and their ability to influence the political process are very limited. In a decent consultation hierarchy persons are seen as members of a group and they are not entitled to equal representation. In the same way, the ability to influence the political process is limited to the idea of *consultation*, not actual influence or the opportunity to have some impact on political outcomes. Political participation described in this way is not, per se, very attractive morally speaking.

A further possibility is that my argument so far has not fully taken into account the role of political participation as what we can call a 'signalling device' in Rawls' argument for toleration. To illustrate, note that my discussion in the previous paragraph assumed that what makes political participation necessary are what we can call its 'intrinsic moral properties'. But, there is more than one way in which a feature of a society, call such feature F, can be necessary to it (the society) being tolerated. F can be necessary because the absence of F is, *by itself*, morally intolerable. But it can also be the case that the absence of F is not what triggers the failure of the necessary condition directly or that in any case it is not the absence of F that matters, morally speaking, but what the absence of F entails. For example, call a second feature of the society in question G and let the conclusion that a society should be tolerated be T. It can be the case that:

$$1. \quad \neg F \Rightarrow \neg G$$

$$2. \quad \neg G \Rightarrow \neg T$$

Here, ex hypothesis, it is the absence of G that matters, morally speaking, when considering toleration. Yet, in both cases note that $\neg F$ implies that we should not tolerate the political society in question:

3. given 1. and 2. we also have $\neg F \Rightarrow \neg T$

However, clearly, our full statement of the reasons that lead us to that conclusion would be very different depending on whether F is morally intolerable per se or simply acts as a signalling device. So, even a sympathetic reader may want to remark that the role of political participation as a necessary condition for toleration could be more instrumental than I have so far suggested. For example, it could be argued that it is not political participation per se that matters, morally speaking, for an account of international toleration. Rather what matters is the type of knowledge that the absence of political participation allows us to gain. To illustrate: in *LP* the absence of political participation may tell us that the society in question is not well-ordered, and, in turn, it could be the fact that the society is not well-ordered that allows us to conclude that it should not be tolerated. In this picture, political participation can still be considered necessary for toleration logically speaking (and so even this instrumental view of the role of political participation is consistent with DIN), however what seems to be doing the work, morally speaking, is the idea of well-orderedness of which political participation is, as Rawls' text tells us, only but one pre-condition.¹⁸

This leads us to consider the following option: should we consider well-orderedness a necessary condition for toleration? As I have just illustrated, an affirmative answer is compatible with DIN as defined above. Nonetheless, considering this option allows us to evaluate DIN in a different light, namely, directly through the notion of well-orderedness. My reply here is that I don't think we should consider well-orderedness, per se, as *necessary* for tolerating a society. In order to see why, let's start with Rawls' understanding of well-orderedness. Rawls tells us that a society is well-ordered when:

- a) Everyone accepts, and knows that everyone else accepts, the same conception of justice;
- b) The society's basic structure is publicly known, or with good reason believed, to satisfy those principles of justice;
- c) Citizens have a normally effective sense of justice, which enables them to understand and apply the publicly recognised principles of justice and act as those principles require.¹⁹

¹⁸ More broadly, as one of the anonymous referees has pointed out, I may have excessively simplified the notion of decency, which includes: a) well-orderedness; but also b) imposing bona fide moral duties; and c) the sincere belief on the part of public officials that the law is guided by a common good conception of justice. I say more about this below.

¹⁹ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001).

With such definition in mind, note that strictly speaking the idea of tolerating only well-ordered political societies has a counterintuitive implication. At face value it seems to suggest that we can imagine a liberal political society that falls outside the scope of international toleration. By this I mean that if we take Rawls' definition of a well-ordered political society, we can imagine a liberal society, call it L, that has the following features:

- i) L protects the basic liberties of the liberal democratic tradition;
- ii) The conception of justice J that is used to provide a benchmark for the organization of L's basic structure is reasonably rejected by at least some of the citizens in L because its justification rests on some form of comprehensive understanding of liberalism;
- iii) From i), ii), and a) above, we can conclude that L is a liberal society but not a well-ordered one;
- iv) Given iii), and taking well-orderedness to be a necessary condition for toleration, we can conclude that L should not be tolerated.

As I said, I believe that the conclusion in iv) is counterintuitive. One way to interpret Rawls' view of well-orderedness is to say that a well-ordered political society is an ideal: the ideal of political society as a form of justificatory community where citizens are able to draw on common normative resources in an exercise of mutual reason-giving. The example of the liberal and yet not well-ordered society simply tells us that the standard way of describing Rawlsian liberalism as 'justificatory liberalism' is more complex than we often realize insofar as the 'liberal' and the 'justificatory' may very well come apart. Indeed, the very definition of a decent people suggests that much: not all well-ordered societies need to be liberal. What is less intuitive is that not all liberal societies need to be well-ordered.

Furthermore, note that the moral attractiveness of the ideal of a justificatory community cannot be assessed without some knowledge of how persons are portrayed in such a community and what types of arguments and reasons are publicly available. The moral quality or character of a justificatory community heavily depends on how it portrays those who are part of its exercise of mutual argumentation and on the types

of reasons that we deem to be normatively acceptable within such framework.²⁰ In a liberal political society individuals are seen as free and equal and the types of reasons that each give to one another are reasons that they believe other can reasonably accept as free and equal. This constitutes, in my view, a large part of what makes the liberal model of justificatory community morally attractive, not simply the mere fact that it is a justificatory community.

Finally note that I am not claiming that the idea of well-orderedness is morally irrelevant. For example, Rawls tells us that a conception of justice that cannot be used as a public standard of justification in a well-ordered society must be considered ‘seriously defective’²¹ while others such as Jeremy Waldron²² and Stephen Macedo²³ tell us that the idea of well-orderedness can be morally significant to provide mutual assurance between citizens concerning their shared normative commitments to each other. These are points that I do not wish to deny. However, they are compatible with assigning a variety of roles to the idea of well-orderedness as an element of the judgment concerning the tolerability of (and more broadly judgements concerning the moral character of) a political society. For example, it would not be implausible to see the idea of well-orderedness as a ‘counting principle’²⁴ or as a ‘good-making feature’. An element that we believe allows us to feel more secure when assessing the moral character of a political society and whether we should tolerate it, but not one that we believe should act as a necessary (or sufficient) condition for such assessments. [NOTE: COMPATIBLE WITH OC]

Given the problems highlighted in DIS and DIN, let us move on to OC. Adopting OC we see allegiance to the eight principles of *LP* as the determining feature of Rawls’ toleration argument. Yet OC also places clear emphasis on the criteria of decency, depicting them as minimal necessary conditions that a society must meet in order to be able to endorse the eight principles of *LP* and thus be tolerated. Put differently, OC is able to combine two important elements of a plausible reconstruction of the Rawlsian view. On the one hand, it does not imply that the criteria of decency, by themselves, are able to settle²⁵ the question of international toleration; as we have seen, this is not a tenable view because the criteria of decency alone fail to provide a convincing argument to that effect. Nonetheless, OC still grants the criteria of decency an important role. It depicts them as

²⁰ Here see Rawls’ distinction between the general and particular meaning of well-orderedness. Rawls, *Restatement*, p. 8-9.

²¹ Rawls, *Restatement*, p. 8-9. Presumably, because such a conception of justice cannot be stable for the right reasons given reasonable pluralism.

²² Jeremy Waldron, “What Does a Well-Ordered Looks Like?”, available at http://www.law.nyu.edu/sites/default/files/ECM_PRO_063313.pdf

²³ Stephen Macedo, “Why Public Reason? Citizens’ Reasons and the Constitution of the Public Sphere”, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664085.

²⁴ Rawls, *Theory*, p. 364.

²⁵ By this I mean that in adopting OC the criteria of decency do not seem to be primarily concerned with the scope of toleration; rather, with giving content to particular set of peoples – those who can endorse the eight principles of *LP*.

minimal necessary conditions that any form of political society must meet for there to be a plausible claim that it can endorse the eight principles of *LP*. In other words, the criteria of decency provide the widest possible net we can cast to ensure that the political societies that meet those criteria will also be able to endorse the eight principles of *LP*.

The most important feature of OC is that the scope of toleration is co-extensive with the ability of a people to endorse the eight principles of *LP*. Should allegiance to the principles of *LP* count for so much in view of Rawls' account of international toleration? The best way to see why it should is to ask a different question: what would be the grounds for not tolerating a society that respects (for the right reasons) exactly the same conception of international justice that liberal peoples themselves give to one another? It must be recalled that the eight principles of *LP* are initially developed precisely to provide a normative benchmark for liberal peoples' foreign policies. They are the conception of international justice that liberals themselves decide to give one another to regulate their mutual undertakings. But then, why should a nonliberal people abiding by the same rules that liberals give to one another not be tolerated? Wouldn't it be inconsistent for liberals to argue that peoples who are prepared to respect, for the right reasons, exactly the same norms they think should organize international society, are not to be tolerated because they are not internally liberal – something that is not inherently required by Rawls' liberal conception of international justice? Furthermore, liberal peoples cannot claim decent ones are (internationally) unreasonable.²⁶ To be reasonable means to be prepared to offer, and abide by, fair terms of cooperation, and to recognize the equal standing of those with whom we cooperate.²⁷ According to OC, decent peoples are prepared to honour a liberal conception of international justice, and by honouring such conception they explicitly accept that other well-ordered peoples are free and independent.²⁸

3 Four Objections to OC

There are at least four objections to OC as I have outlined it above. Firstly, why have criteria of decency at all if the scope of toleration is ultimately decided in terms of a society's ability to endorse the eight principles of *LP*? Are criteria of decency redundant after all? I do not believe so. Even accepting the primary role of the eight principles of *LP*, the principles themselves cannot give us a concrete picture of a kind of people that would be

²⁶ See Porter, "Rawls, Reasonableness, and International Toleration".

²⁷ Boettcher, J. 'What is Reasonableness?', *Philosophy and Social Criticism*, 30(5-6), 2004.

²⁸ The domestic account of reasonableness also features the readiness to accept the burdens of judgment. To what extent this requirement applies to collective agents or their representatives is unclear, but if it does, it does not seem implausible to claim that decent peoples could accept them given that they see the internal political make-up of liberal societies as compatible with a just international order.

able to endorse them. This seems particularly important for Rawls' account of international toleration because it is precisely by specifying the content and meaning of the criteria of decency that we are able to give shape to the possibility that a nonliberal people that endorses the eight principles of *LP* can in fact exist. Neither the fact that such peoples exist, nor what they could look like, can simply be inferred from the eight principles themselves. The criteria of decency, then, help us give shape to the scope of international toleration in a way that the principles of *LP* do not. Furthermore, even accepting that the criteria of decency cannot form the basis of our argument about toleration, they can nonetheless still help us by giving content to our picture of a decent society, to confirm in reflective equilibrium that our argument for international toleration is sound. By providing an understanding of how citizens of a decent people are treated by its government and institutions, it helps us ensure that the general principles that guide our account of international toleration are at least minimally compatible with our considered convictions about minimal human welfare and dignity. The criteria of decency, then, do not provide reason enough to extend equal standing to decent peoples, but they can plausibly be seen as providing reason enough to allow that an argument that does is not necessarily to be rejected.

Secondly, it can be claimed that accepting OC leads us to confuse the scope of toleration with the scope of public justification.²⁹ In other words OC assumes that the scope of toleration is co-extensive with the scope of public justification insofar as the object of toleration, decent peoples, are also depicted as members in good standing of international society and as participants in the justificatory process of the principles of international justice. This is a view that Rawls himself rejects at the domestic level. For example, while unreasonable citizens of a liberal democratic polity are not part of the constituency of public justification³⁰ they are nonetheless part of the constituency of toleration insofar as they are afforded, bar exceptional circumstances, the same rights and prerogatives of reasonable citizens. I think this is an important point, but ultimately I believe it signals some form of asymmetry between the domestic and international conceptions of toleration rather than problems with OC. Simply put, at the international level it seems clear that Rawls believes that the constituency of toleration and the constituency of public justification are co-extensive (at least to a greater extent than at the domestic level).

This can be defended both exegetically and conceptually. The former defence is twofold: Rawls is clear that decent peoples are equal members of the Society of Peoples; and that they too participate in the justificatory

²⁹ See Jonathan Quong, *Liberalism Without Perfection* (Oxford: Oxford University Press, 2011), pp. 297, 298 n. 26.

³⁰ Though some think they should be: Erin Kelly and Lionel McPherson, "On Tolerating the Unreasonable," *Journal of Political Philosophy* 9:1 (2001), pp. 38–55. I will remain agnostic on this point. What I want to claim is that, even accepting Quong's argument, there seem to be good reasons to think that *LP* deals with this problem differently.

process for the eight principles of LP through a second run of the international version of the original position.³¹ These two features seem to imply that the eight principles of LP do not simply “apply” to decent peoples, but that the latter are also part of the international constituency of public justification.³² However, the exegetical justification alone is insufficient. The reader is entitled to ask: what justifies this asymmetry beyond mere textual support? Why should there be a difference between the way a liberal theory deals with “unreasonableness” domestically and “decency” internationally? The essential explanation is to be found in the way in which liberal peoples themselves articulate their mutual undertakings in the first international original position of *LP*. As I have already noted, liberal peoples endorse the eight principles of LP as their *liberal* conception of international justice. Now, as it happens, and as the conceptual analysis above suggests, liberal peoples realize that decent peoples can endorse these very same liberal principles of international justice too. Liberal peoples are thus confronted with agents that, while not internally liberal, are still prepared to abide by liberal international principles. But, according to liberal political morality itself, liberals are required to provide a justification to nonliberal agents who are willing to comply (for the right reasons) with a liberal conception of justice.³³ Thus, the asymmetry (i.e. the fact that decent, not fully reasonable, societies are part of the constituency of justification internationally while unreasonable citizens are not part of such constituency domestically) is based, conceptually, on the fact that the eight principles of *LP* are permissive enough to allow even internally nonliberal societies to endorse liberal international principles.³⁴

The third objection to OC relates to the explanation I have provided as to why decent peoples should be part of the constituency of justification at the international level, which the reader may accuse of simply pushing the problem one step back: why are liberal peoples prepared to agree to the eight principles of LP instead of a more demanding set of principles that requires all peoples to be internally liberal? One may legitimately suspect that the only reason for doing so is to artificially alter the conclusions of the first (liberal) international original position with the aim of accommodating decent peoples.³⁵ This would be problematic because the principles of *LP* would not constitute a liberal conception of international justice but a conception of international justice already geared to reflect a concern for international toleration. If this were to be the case, allegiance to the

³¹ Rawls, *The Law of Peoples*, pp. 68–70.

³² See also Porter, “Rawls, Reasonableness, and International Toleration”. Avila, “Defending a Law of Peoples,” however, offers an argument that could support a different conclusion on this point.

³³ Here I follow Porter, “Rawls, Reasonableness, and International Toleration.”

³⁴ This is an unusual problem given the Rawlsian concerns with stability in liberal societies. In the domestic case Rawls investigates the possibility of overlapping consensus given the fact of reasonable pluralism. In the international arena, I believe, it is better to view things from the opposite direction and reflect on our attitudes toward nonliberal societies *given* their allegiance for the right reasons to a liberal conception of justice.

³⁵ Pogge, “Do Rawls’ Two Theories of Justice Fit Together?”; Pogge, “The Incoherence Between Rawls’s Theories of Justice”; Pogge, “Rawls on International Justice”; Beitz, “Rawls’s Law of Peoples”.

principles of *LP* would *presuppose* an account of toleration and would thus not be able to provide one (as OC suggests).

There are two reasons for the principles of *LP* not to require internal liberal political institutions. Firstly, the rights protected by a liberal constitutional regime are already guaranteed within the different domestic jurisdictions of liberal peoples.³⁶ In the first original position in *LP*, representatives of peoples know that they are representatives of *liberal* peoples. Thus they know that the main aspects of a liberal democratic regime are already part of the domestic basic structures of the peoples they represent. What would be the gain in duplicating these features at the international level? Secondly, liberal peoples realize that reference to the basic internal features of their political institutions (beyond the requirement that they respect human rights) would essentially give other liberal peoples greater say over their domestic affairs – it would turn their constitutional politics into a matter of international concern, and thus curtail one of their defining interests as liberal peoples, namely political self-determination.³⁷ Consider the implications for liberal peoples' self-determination of the inclusion in the principles of *LP* of the basic liberties covered by the first principle of justice as fairness. If we included these liberties in *LP*, the way in which they are implemented, the interpretation of their concrete meaning, and how they are entrenched in the domestic constitution of a liberal people, would all be transformed into matters of international concern and partially removed from the democratic process of each liberal people. To illustrate, in *A Theory of Justice* Rawls is clear that the first principle of justice can only provide broad guidance on how the basic liberties to which it refers should be adjusted to cohere into a single scheme. In turn, such adjustment should track the specific conditions of a given society and cannot be simply specified ex-ante at the international level.³⁸ For example, one can conjecture that different basic liberties may have comparatively different values according to prevailing cultural, social, economic and political conditions in different societies. In the same way, when Rawls discusses the curtailment of basic liberties he states that it may happen only for the sake of the basic liberties themselves.³⁹ Yet, decisions concerning the curtailment of basic liberties require some sensitivity to local circumstances. It would not be implausible to think that a liberal people that faces recurrent terrorism could decide to put in place more restrictive controls on political speeches supporting the terrorists, and that such controls should (in this specific case) ultimately track the collective deliberations of the

³⁶ See also Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007), p. 276; Samuel Freeman, *Rawls* (New York: Routledge, 2007).

³⁷ Rawls, *The Law of Peoples*, p. 29.

³⁸ John Rawls, *A Theory of Justice*, revised edn (Cambridge, MA: Harvard University Press, 1999), pp. 52ff.; Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford: Oxford University Press, 2007), pp. 85ff.

³⁹ Rawls, *A Theory of Justice*, p. 54.

particular public in question, not those of the members of the Society of Peoples. In short, a version of LP requiring internally liberal political institutions would largely duplicate what representatives of liberal peoples take for granted (that they all represent liberal peoples) and would also negatively affect one of the defining interests of those they represent (liberal peoples' interest in self-determination).

Finally, some may still suggest that OC does not seem to be convincingly supported by Rawls' text. For example, when outlining the basic reasoning that grounds its view of toleration, Rawls writes that "provided a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples, a liberal people is to tolerate and accept that society".⁴⁰ The latter quote seems to be consistent with DIN, and seems to suggest precisely what OC rejects, namely, that what Rawls here calls 'certain specified conditions of right and justice', and that include what I have called the criteria of decency, do play some independent role in the argument for toleration. They are necessary (yet not sufficient) for tolerating a nonliberal political society. My reply is twofold. Firstly, even accepting that the passage is closer to DIN than to OC, this still leaves open the possibility that the text can be better understood, and put in a more positive light as a whole, if interpreted along the lines I have suggested. In fact, interpretive charity would suggest that we proceed precisely in that way; if we can provide a stronger statement of Rawls' argument concerning toleration we should do so even if we need to partially depart from a given passage in the text. This is precisely the type of claim I am making by putting forward OC as an alternative to what I consider to be more canonical interpretations of Rawls' view on international toleration. Secondly, this time concerning authorial intentions, it is striking that Rawls' first version of *LP*,⁴¹ his Amnesty lecture, features the same passage but with an important grammatical change that seems to completely alter the structure of the argument. There Rawls writes that "a liberal society is to respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples".⁴² Replacing 'and' with 'that' clearly changes the nature of the claim even in the specific passage under consideration and makes the latter much closer to OC than to DIN. While clearly the final version of *LP* is to be considered Rawls' definitive statement on the topic, noting the change suggests that it is not completely interpretively implausible to suggest reading the text through OP.

⁴⁰ Rawls, *Law of Peoples*, pp. 60-61.[emphasis added]

⁴¹ John Rawls, *Collected Papers*, (Cambridge: Harvard University Press).

⁴² Ibid, pp. 41-42. [emphasis added]

4 A Final Comment Concerning OC

I want to conclude the discussion of OC by illustrating an important feature of OC. While I cannot possibly do justice to the important task of situating OC within the broader context of different conceptions of toleration,⁴³ I want to suggest what I take to be a clear advantage that OC seems to have when compared to DIN once we recall something that is crucial about any account of toleration. As David Heyd famously put it, toleration is an elusive virtue. More than that, following Bernard Williams, we can say that toleration has an almost paradoxical character since it effectively asks us to give normative authority to principles and ideas (I use the terminology quite loosely here) that we deem to be morally wrong or defective. Of course, we can have prudential or sceptical reasons to tolerate an agent or doctrine.⁴⁴ However, if we understand toleration as compatible with mutual respect and equal standing as Rawls does, we clearly have to confront the tension: how can we possibly respect and bestow equal standing to an object that we deem, *ex hypothesi*, to be seriously defective? I think that once we accept this tension it becomes clearer why, among other reasons, OC is an attractive alternative to the standard interpretations of the Rawlsian conception of international toleration. OC effectively allows us to provide a specific strategy to defuse the tension I have just highlighted. Substantively, it does so by allowing liberals to be consistently faithful to their liberal commitments. Conceptually, it does so by essentially providing two distinct standpoints from which to assess non-liberal political societies, a domestic one and an international one.

Liberal peoples are, by definition, internally liberal. Furthermore, when it comes to their foreign policies, the principles of justice they subscribe to are, as Rawls tells us, the principles that representatives of liberal peoples would endorse as a reasonable interpretation of what a liberal foreign policy requires. However, liberal peoples realize that, for reasons that are connected to their desire to protect their (liberal) self-determination, there is a discrepancy between their internal views about how a political society should be structured and the principles of justice for international relations they endorse. It is crucial to stress that the discrepancy between the two is motivated by what we can depict as a form of reasoning that is fully internal to liberalism itself, at least if we are prepared to accept that liberalism should find some place for the collective political autonomy of a people (provided the latter is duly constrained). In turn, the aforementioned discrepancy allows them to conjecture that there could be non-liberal political societies that while not internally liberal could still subscribe to a fully liberal conception of international justice.

⁴³ Catriona McKinnon, *Toleration: A Critical Introduction* (Abingdon: Routledge, 2006)); David Heyd, *Toleration: An Elusive Virtue* (Princeton, NJ: Princeton University Press, 1998);

⁴⁴ See McKinnon, *Toleration*.

Note how, in this picture, the problem of international toleration is internal to liberal political morality. Our assessment of non-liberal and yet decent well-ordered political societies is not what guides our views about toleration. Instead, we see non liberal agents as equal members in good standing of international society simply because they follow exactly the same type of political principles we believe are correct from a liberal standpoint. This does not entail, of course, that principles of political justice for a liberal law of peoples should necessarily be silent on the internal political make up of those who participate to the overlapping consensus. And there is certainly room for a process of reflective equilibrium in which the principles, and what endorsing them for the right reasons allows a people to do and to be internally, adjust to one another in light of what we find acceptable all things considered. However, it is important to stress that from the perspective of OC liberal and decent peoples are simply put behaving in the same way.

Some may object that this suggests that decent peoples are fully just and thus just equal to liberal peoples. Clearly this is not the case. From the perspective of a liberal political conception of social and distributive justice they clearly are defective. Indeed this is precisely what creates the tension that I mentioned in the beginning of this section. Put differently, we should think of decent non-liberal peoples as ‘objects’ that take on different shapes depending on the standpoint we use to look at them: from the standpoint of a liberal conception of domestic social justice they are but the pale shadow of what we think is just and yet looked at from the standpoint of a liberal foreign policy they endorse the same liberal principles we (liberals) think are just and reasonable. In turn, the latter idea invites the following question: why should the fact that decent peoples comply with a liberal law of peoples be sufficient and not be overridden by the fact that decent peoples are internally morally defective? The answer is once again going to be only partial and incomplete: it will depend on what we take to be the balance between the values that are in play. And such values can be liberal all the way down: they tell us something about the type of ‘price’ we are prepared to pay to protect the political self-determination of liberal democratic citizens. Some may believe that such ‘price’, given how undemanding the 8 principles of *LP* are, is set too high by Rawls. However, simply accepting that there is at least *a* price worth paying creates a conceptual space for considering whether or not non-liberal peoples can in fact adopt a liberal foreign policy and sheds light, if this happens, concerning why we should tolerate them.

5 Tolerating Benevolent Absolutisms?

In sections 2 and 3 of the paper I have argued that the best option to conceptualize the structure of toleration in *LP* is to see the criteria of decency as minimal necessary conditions that a society must meet if it is to be able to

endorse the eight principles of LP. In the following three sections I want to suggest something potentially troublesome for the Rawlsian view: that accepting this picture of toleration in LP does not seem to provide conclusive reasons not to tolerate benevolent absolutisms. Why so? In short, because adopting OC we cannot fully explain why (all) the criteria of decency are necessary for supporting the eight principles of *LP*. More specifically, recall that we have identified three criteria of decency: (a) respect for human rights; (b) a non-aggressive foreign policy; and (c) a system of internal political participation. While the first two criteria of decency are explicitly or implicitly required by the eight principles of LP, the third one, internal political participation, does not seem to be. The eight principles of LP⁴⁵ require that well-ordered peoples respect human rights (principle 6); while principles 4 and 5 articulate a plausible definition of what a non-aggressive foreign policy is. If we see the criteria of decency as necessary requirements for a people's allegiance to the eight principles of LP, then a people's respect for human rights and its having a non-aggressive foreign policy are features that are either explicitly or implicitly required by the very content of the eight principles of LP; but the fact that a decent people must provide for internal political participation is not.

Yet, if we dropped the requirement of political participation from the criteria of decency, the scope of international toleration would change. In *LP* Rawls states that benevolent absolutisms cannot be members in good standing of the Society of Peoples because, while they respect the human rights of their citizens, the latter "are denied a meaningful role in making political decisions."⁴⁶ But, given the overall strategy on toleration offered by OC above, and unless the eight principles of LP themselves explicitly or implicitly require it, it is unclear why the fact that benevolent absolutisms do not permit meaningful political participation would imply that they are not to be tolerated. Why should the lack of internal political participation determine the chances of benevolent absolutisms being able to endorse the eight principles of *LP*? **Three** arguments can be made against the assertion that a proper understanding of the structure of the toleration argument in *LP* allows for the inclusion of benevolent absolutisms. One could argue that benevolent absolutisms cannot endorse the eight principles of *LP*, which are addressed to peoples, because they are not a "people." One could argue that benevolent absolutisms cannot endorse the eight principles of *LP* because they are not externally peaceful, while *LP* requires all peoples to be non-aggressive in their foreign policy. **Finally, one could argue that benevolent absolutisms cannot respect the principles of *LP* because, given their internal political make-up, they cannot**

⁴⁵ See note 6 for the wording of the eight principles of *LP*.

⁴⁶ Rawls, *The Law of Peoples*, pp. 4, 63.

secure human rights *as rights*. In the following three sections of the paper I explore and refute all three argumentative strategies.

6 A Law For ‘Peoples’?

In *LP* Rawls uses the term ‘peoples’ only for (decent or liberal) well-ordered political societies. Furthermore, the eight principles of *LP* are explicitly addressed to peoples, not outlaw states, burdened societies or benevolent absolutisms. A possible objection to the inclusion of benevolent absolutisms in the scope of international toleration, therefore, is that they cannot endorse the eight principles of *LP* because the principles are addressed to a different type of agent, namely ‘peoples’. This argument is at best inconclusive. To call one political society a “people” and another a “benevolent absolutism” will not by itself determine the scope of toleration. If we attach a label to a type of agent, and if attaching the label itself implies not tolerating the agent in question, then we are bound to provide a non-descriptive argument as to why the label has been allocated in this way and such argument has to provide independent normative grounds for not tolerating the agent in question. What is the reason to attach the label “peoples” to a political society? Initially, Rawls adopts the terminology to distinguish peoples from states. The latter are rational actors, while the former are also reasonable and thus have a moral nature.⁴⁷ Yet, to have a moral nature (in this specific context) simply suggests the ability to restrain one’s pursuit of rational interests through a reasonable law of peoples. Given that we are trying to establish whether benevolent absolutisms can in fact follow the principles of *LP*, it would be circular to exclude them because we presuppose that they cannot.

Alternatively, Philip Pettit has suggested that the term “peoples” as used by Rawls can only be employed to describe a political unit if there is a specific type of representative relationship between the rulers and the ruled.⁴⁸ That may be the case, but note that, as Pettit recognizes, Rawls (mostly) develops the latter idea when describing liberal societies, not all well-ordered societies generally.⁴⁹ Therefore, accepting this line of argument, we may have to question why Rawls extends toleration to decent peoples. Furthermore, even if we accept Pettit’s argument about what a people “is” and allow the term to apply to both liberal and decent peoples,

⁴⁷ Rawls, *The Law of Peoples*, p. 29.

⁴⁸ Philip Pettit, “Rawls’s Peoples,” in Rex Martin and David Reidy (eds.), *Rawls’s Law of Peoples: A Realistic Utopia* (Oxford: Blackwell Publishing, 2006), pp. 38–56; Pettit, “Legitimate International Institutions: A Neorepublican Perspective,” in John Tasioulas and Samantha Besson (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 139–62, p. 154.

⁴⁹ Pettit’s text (“Legitimate International Institutions,” p. 154, nn. 24–5) references p. 24 and p. 38 in *The Law of Peoples*: in both instances Rawls is outlining the relationship between a people and its government in a liberal democratic regime.

the ascription of the term does not provide an argument for deciding the scope of international toleration. As we have just seen, defining what a people is, even in terms of a morally praiseworthy characteristic such as internal political participation, cannot per se explain why we should not tolerate those who are not “peoples” or why a conception of international justice that will implicitly decide the scope of international toleration should be addressed to “peoples” defined as Pettit suggests.

A further argumentative strategy would be to ground the distinction between well-ordered political societies (“peoples”) and non-well-ordered ones on the normative ideal of genuine social cooperation. Rawls distinguishes between genuine systems of social cooperation organized by a liberal (or common good) conception of justice featuring democratic procedures (or a decent consultation hierarchy) and social systems based on command by force (a putative description of benevolent absolutisms).⁵⁰ Unfortunately, this line of argument does not even get off the ground since Rawls is clear that it is the violation of basic human rights that qualifies a form of political rule as a system of command by force, not internal political participation.⁵¹ However, benevolent absolutisms do respect the human rights of their members (but see below for discussion of this point).

Finally, one may wish to ground the distinction between peoples and other types of political society on the difference between social cooperation and “merely coordinated social action.”⁵² Social cooperation is not an “activity coordinated by orders issued by an absolute central authority”; rather, social cooperation, for Rawls, is “guided by publicly recognized rules and procedures which those cooperating accept as appropriate.”⁵³ This is a more promising line of enquiry as the language employed may suggest that social cooperation requires some form of consultation procedure if it is to avoid being described as merely coordinated social action. However, firstly, this strategy would need to be supplemented by an argument that explains why the scope of international toleration should be determined by the distinction between social cooperation and merely coordinated social action. That a society displays a morally relevant feature that another lacks does not, per se, tell us much about toleration. A further argument is needed, one that explains the relationship between social cooperation and toleration.

⁵⁰ Reidy, “Cosmopolitanism: Liberal and Otherwise”; Reidy, “Rawls on International Justice.”

⁵¹ Rawls, *The Law of Peoples*, p. 68.

⁵² John Rawls, Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), p. 6.

⁵³ Ibid. The idea of social cooperation also includes a reference to fair terms of cooperation that each person can reasonably accept and a reference to each person’s rational good. I do not discuss these features because I see them as less salient in the present context. The first may be effectively violated by decent peoples given that decent citizens are not seen as reasonable within the common good conception of justice. The second is a weak requirement plausibly met by benevolent absolutisms.

One possibility is that describing a group as a form of social cooperation makes it appropriate to consider the leadership of that group as legitimate, and thus in a position to impose genuine duties on its members.⁵⁴ For example David Reidy has recently argued that what benevolent absolutisms cannot be tolerated because their internal political structure is not “a system of cooperation between persons governed by public right” (ibid., p. 181) capable of imposing genuine duties. Here, I cannot possibly do justice to the complexity of Reidy’s argument given the space available. However, I wish to express some initial doubts about his conclusions. Where a system of public right exists, Reidy argues, there is genuine political authority in a political community and, therefore, citizens of that community have ‘bona fide prima facie moral obligations to obey the law’ (184). Furthermore, in a system of public right, citizens are subject to a natural duty of justice. Such duty has two main aspects. One is the prima facie moral obligation to obey the law ‘qua law’. The other is the obligation to take ‘reasonable steps’ to improve the justness of the law. In this picture, citizens of decent peoples will have to determine whether their prima facie moral obligations to obey the law are also their ultima facie moral obligations. And foreigners, liberal or otherwise, should afford them the freedom to do so. Firstly, I

I wish to note that even if successful Reidy’s argument seems to ground a duty not to prevent citizens of a decent society to comply with their prima facie moral obligations, not one to respect them as equal members in good standing of international society. In the same way, I am unclear about why, even accepting Reidy’s argument, we should, as Reidy claims, refrain from endorsing non-coercive measures (for example, public criticism and the use of positive incentives) meant to influence the internal political life of decent societies. However, ultimately, this is what Rawls’ argument asks us to justify.

Secondly, the distinction between social cooperation and merely coordinated social action, taken at face value, cannot conceptually rule out the possibility that a benevolent absolutism can have be a system of social cooperation. Why? Strictly speaking the distinction between the two does not seem to be exhaustive. This is because the first refers to the pedigree of the norms that structure social cooperation while the second refers to the type of attitude citizens have towards those ‘rules and procedures’. Simply put, to see social cooperation as “guided by publicly recognized rules and procedures which those cooperating accept as appropriate” refers to

⁵⁴ I would like to thank an anonymous referee for pushing me to consider this option. The referee also suggests that the idea of social cooperation may be instrumental to claim that a group can be considered a collective agent. I am not convinced by this claim. The claim seems to imply that, for example, a firm where most of the work force is not represented in the board is not a collective agent. However, that is counterintuitive. Furthermore, most of the literature on collective agents does not mention the idea of representation as a necessary (or sufficient) condition. Representativeness may, of course, play a larger role when it comes to collective responsibility rather than collective agency.

how members of society relate to the rules under which they cooperate, not their origins (how where the rules and procedures generated?). Yet, there is no conceptual reason to believe that, in a benevolent absolutism, persons may not feel some form of identification with the ‘rules and procedures’ under which they cooperate. We simply cannot know this ex-ante by looking at the definition of a benevolent absolutism.

7 Benevolent Absolutisms and Human Rights as Rights⁵⁵

Let’s consider the relationship between benevolent absolutisms and human rights. Rawls provides a relatively short list of human rights (but see Reidy), however, respecting them is clearly a necessary condition to be a member in good standing of the Society of Peoples no matter which account of toleration among the ones I have discussed above one subscribes to. In *LP*, human rights set a precise limit to the scope of internal political autonomy of a people and explicitly feature in the 8 principles of justice that both decent and liberal peoples endorse. Can benevolent absolutisms respect human rights? At first sight, the question may invite a relatively easy answer: they can because this is how Rawls defines them. Unfortunately this answer is not conclusive for two reasons. Firstly, it solves the conceptual question by definitional fiat. Secondly, and more subtly, because there is a conceptual gap between the two following ideas: a) a political society that honours the *substance* of basic human rights; b) a political society that secures human rights *as rights* (see Shue, 1996). The gap can be illustrated as follows: while in both cases no form of outside intervention seems to be justified (at least if one follows Rawls and believes that human rights have this function), only the second type of society provides *reliable assurance* that it can effectively protect human rights and endorse the principles of *LP* for the right reasons. The conceptual gap can be illustrated by the following argument:

- (i) benevolent absolutisms honour the substance of human rights;
- (ii) benevolent absolutisms do not secure human rights *as rights*;
- (iii) from (ii): benevolent absolutisms cannot reliably protect human rights;
- (iv) from (ii) and (iii): benevolent absolutisms cannot fully comply with the 8 principles of *LP*.
- (v) from (ii), (iii) and (iv): benevolent absolutisms cannot be considered as members in good standing of the Society of Peoples;

⁵⁵ I would like to thank an anonymous reviewer for pressing me on this point. The substance of my analysis is greatly indebted to Walter Riker’s excellent paper ‘Human Rights Without Political Participation’, *Human Rights Review*, (2014) 15: 369–390.

- (vi) from (i) and (v): benevolent absolutisms are sovereign over their people and territory but should not be tolerated.

In this picture, benevolent absolutisms would still be considered as different from outlaw states. This would allow us to retain much of the substance of Rawls' definition without having to accept that they can potentially become part of an overlapping consensus on the principles of *LP*. Why should we believe that benevolent absolutisms cannot respect human rights *as rights*? Because, following Shue, we can argue that the very idea of an absolute form of political rule seems to suggest that those who enjoy the substance of basic rights do so only at the discretion of those who rule. However, we normally see rights as entitlements that cannot be changed at the discretion of those who are in power. In fact Shue explicitly considers the idea that a benevolent dictator. The dictator may actually allow its subjects to enjoy the *substance* of what Shue calls basic rights. But, "What is missing that keeps people under the ideally enlightened despot we are imagining from enjoying rights, and that would be supplied by rights to participate in the control of the substances of other rights, is social institutions for demanding the fulfilment of the correlative duties, especially the duty to provide one vital form of protection: protection from the government itself (...)" (76).

There are two replies I wish to put forward. Firstly, as Shue himself recognizes, his theoretical case for saying that a benevolent despot cannot allow his subjects to enjoy certain rights as rights is not, in his own view, final insofar as "it is not utterly inconceivable that some set of institutions without basic right to participation might turn out to protect people's other rights as well as, or better than, the most effective participatory institutions do. However unlikely this is in practice, it is not evident how to rule out the theoretical possibility (...). 87. For example, again following Shue, there is no conceptual impossibility in imagining a benevolent dictator establishing some form of rule of law that is independent from the dictator's will⁵⁶. This should signal that, at least conceptually, we can think of a rights-respecting-benevolent-absolutism.

There is also a second reply. Namely, that it is by no means self-evident that the correct way of postulating the relationship between rights to political participation and other basic rights is the one suggested by Shue. Shue claims that rights to political participation are instrumentally necessary to secure other basic rights. One way to picture the instrumental relationship between political participation and human rights is to see political participation as a 'lever' (I borrow the term from Riker, 2014: 381) that citizens can use to

⁵⁶ See Reidy, 2012, 192: the benevolent absolutism might fulfil the old natural law conception of rightful rule as a public dictate of reason aimed by she who has authority over the community at the common good of the community'.

effectively constraint political leaders and make sure that they respect basic human rights. Yet, this argument is implausible, following William Riker, for the simple reason that it is very unlikely that political leaders that are willing to violate basic human rights will nonetheless respect rights to political participation. Furthermore, while we can argue that political participation protects basic human rights, we still need to explain what exactly will protect political participation in the first place when citizens are facing political leaders that are willing to disregard their basic rights (Riker, 381). According to Riker it is the shared normative commitments of those who participate to social cooperation to the basic welfare of their fellow citizens, rather than political participation rights per se, that actually constitute the core defence such individuals have against the violations of their basic human rights (383 and 388). However, if this is the case, there seems to be no clear reason to believe that such shared commitments to the welfare of citizens cannot be found within a benevolent absolutism.⁵⁷ If this picture is correct, then, the lever argument is at best inconclusive and thus cannot form the basis of a rejection of the picture of a human-rights-respecting-benevolent-absolutism.

8 Benevolent Absolutisms and Democratic Peace

Can it be the case that benevolent absolutisms are unable to be consistently (externally) peaceful? Rawls does not say as much, but his description of well-ordered peoples as “satisfied peoples” and his sui-generis interpretation of democratic peace might signal this conclusion. Rawls’ analysis starts from liberal peoples. Liberal peoples are different from states. While states are simply guided by what they perceive as their rational interests, liberal peoples have a moral nature and they set limits to what their interests can legitimately be.⁵⁸ Given their reasonable interests, liberal peoples do not want more power, territory, wealth or glory. According to Wenar and Milanovic, liberal peoples’ peacefulness in *LP* is based on their commercial character, their indifference to perpetual economic growth and their tolerant attitude toward pluralism of religious beliefs.⁵⁹ More controversially, Rawls also extends this analysis to decent peoples and claims that even decent peoples are “satisfied peoples.” As Wenar and Milanovic point out, the extension of democratic peace to nondemocratic but decent peoples is problematic.⁶⁰ The empirical support for the idea of democratic peace cannot readily be

⁵⁷ According to Riker we can picture Rawls as endorsing what he calls the Rights View. According to such view basic human rights act as preconditions to political participation. (375).

⁵⁸ Rawls, *The Law of Peoples*, p. 29.

⁵⁹ Leif Wenar and Branko Milanovic, “Are Liberal Peoples Peaceful?”, *Journal of Political Philosophy* 17:4 (2009), pp. 462–86, p. 469.

⁶⁰ But see Walter Riker, “The Democratic Peace is Not Democratic: On Behalf of Rawls’ Decent Societies,” *Political Studies* 57 (2009), pp. 617–38, for an argument in favour of the extension.

deployed to tell us that even nondemocratic but decent peoples can behave in the same way.⁶¹ However, even if we were to accept Rawls' extension of the democratic peace hypothesis, the very features of well-ordered peoples that Rawls gives as the basis for their being "satisfied peoples" (that is, their indifference to economic growth, their tolerance and their commercial character) can be plausibly extended to benevolent absolutisms.⁶² There seems to be no principled reason to state that benevolent absolutisms cannot share these three features. Rawls' definition only signals that they respect human rights but do not allow political participation, and he is silent on their attitudes towards growth, commerce and religious diversity.

Even more importantly, whatever the merits and effective boundaries of Rawls' interpretation of democratic peace, it can only establish that certain peoples (liberal and decent, for example) are more likely to be peaceful toward each other; it cannot establish a negative relationship between non-well-ordered institutions (the kind that would belong to benevolent absolutisms) and aggressive behaviour in foreign policy. This is the result of the very structure of the claims made by the democratic peace thesis. The democratic peace thesis makes two types of claims.⁶³ The first is descriptive and highlights a pattern or regularity in foreign policy behaviour. It holds that armed conflict between two democratic countries is less likely to occur than armed conflict between a democratic country and a non-democratic country or between two non-democratic countries. The second type of claim is causal and pertains to the explanation of the first, descriptive, claim. It tries to ascertain which features (or set of features) of democratic countries and institutions can provide an explanation for their more peaceful behaviour towards each other. Many causes have been suggested: Rawls, as we have seen, seems to favour a satisfaction account. But different ways of portraying the causal link between democratic institutions and peacefulness towards other democracies include references to constitutional constraints, the nature of electoral politics in a democratic polity, the consequences of economic interdependence, and the normative attitudes held by democratic citizens toward war and conflict.⁶⁴

For our purposes here, it is important to note two things in connection to the democratic peace thesis. Firstly, no matter which causal account one adopts, it will only be able to explain the reasons for the external peacefulness of democratic countries towards each other - not why non-democratic societies cannot be consistently peaceful. Secondly, and relatedly, the descriptive thesis of democratic peace can only tell us that democracies are statistically more peaceful towards each other compared to other forms of regimes, but it cannot

⁶¹ Michael W. Doyle, "Three Pillars of the Liberal Peace," *American Political Science Review* 99:3 (2005), pp. 463–6.

⁶² In fact, the case of Brunei that I have briefly described in the previous section of the paper seems to suggest that to ascribe these features to a benevolent absolutism is far from a remote possibility.

⁶³ Here I follow Riker, "The Democratic Peace is Not Democratic," p. 622.

⁶⁴ Ibid.

tell us whether a given non-democratic regime type is externally peaceful or not. In other words, the democratic peace thesis can only establish (at best) *sufficient* conditions for reliable peace between certain types of collectives; it cannot, logically, establish *necessary* conditions as well. In turn, if democratic peace theory cannot establish necessary conditions for external peacefulness, then, even assuming that benevolent absolutisms are not within the remit of democratic peace (something that we can legitimately doubt given Rawls' understanding of the bases of democratic peace), it will not conclusively tell us whether benevolent absolutisms are externally peaceful or not. We thus have no conclusive reason to state that they would not be able to endorse principles 4 and 5 of *LP*. It could be argued that while democratic peace theory cannot establish necessary conditions for external peacefulness, it provides support for the conjecture that some regimes are "much more likely" to be externally peaceful than other types of regimes. That may very well be the case, but recall that we are looking for reasons to conclude that benevolent absolutisms cannot be members in good standing of the Society of Peoples. In other words, we are looking for reasons to exclude an entire class of societies from the scope of toleration. The reasons we put forward need to be categorical rather than probabilistic in character. Simply arguing that a type of regime (decent or democratic) is more reliable in developing a peaceful attitude toward other well-ordered peoples is not reason enough to exclude an entire class of non-decent or non-democratic societies a priori.

9 Conclusion

The vast majority of *LP*'s critics have been concerned with the excessively permissive nature of the Rawlsian account of international toleration. In this paper I have shown that if we adopt the best reconstruction of the Rawlsian account of international toleration the real issue is not to explain why we should tolerate decent peoples, but why we should not tolerate benevolent absolutisms.